Supreme Court, U.S.
FILED
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Docket No._____

In The

Supreme Court of the United States

October Term, 1998

Daniel B. Snyder, Pro Se

v.

Isaac S. Garb, judge/-

A. Taylor Williams, State Court Administrator,

atty. for Isaac S. Garb,

On Petition for Writ of Certiorari To The

United States Court Of Appeals For The Third

Circuit

Petitioner
Daniel B. Snyder
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Warrington PA 18976
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Respondant
Isaac S. Garb/A. Taylor Williams, Esquire
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28 pp

QUESTIONS PRESENTED

1. If a Federal Judge hides evidence from the Appellate Court of Ballot Box stuffing should he be removed from office ? (Note: We use Ballot Box stuffing for brevity. More detail will be included in the argument.)

2. Should an Appellate Court (3d Cir.) ignore a Judgement By Default by avoiding their responsibility of fact-finding ability and discovery of a fraudulent Certificate of Service on Judge Garb's motion to dismiss ?

3. Should this U. S. Supreme Court correct the confusion and contradiction (between the appendix of the district court and 3d circuit) ?

4. Should the U.S. Supreme Court correct the fact-finding of the lower courts and recognize the "ex-parte" conference between Judge Garb and attorney for Board of Elections ?

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TABLE OF CASES

To show fair play:

Briscoe v. Kusper

435 F 2d 1046 (7th Cir.)

Moore v. Kusper

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Bush v. Lucas

103 S. Ct. 2404 (1983)

Swann v. Charlotte Mecklenburg Bd of Education

402 U.S. 1 15-16, 91 S. Ct. 1267, 1275-1276, 28 L. Ed. 2d 554 (1971)

Younger v. Harris

401 U.S. 37 , 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)

Reynolds v. Sims

84 S. CT 1362

Marks v. Stinson

19 F 3d 873 (3d Cir. 1994)

Marbury v. Madison

1 Cranch 137, 163 2 L. Ed. 60 (1803)

O' Bar v. Pinion

953 F. 2d 74 (4th Cir. 1991)

JURISDICTIONAL STATEMENT

The authority of this court is pursuant to article III section 2 of the U. S. Constitution .

The time element of jurisdiction: The Court of Appeals of the Third Circuit order of July 20, 1998 and this petition being filed in the month of September of the same year, 1998, fall within the required ninety day limit.

REASON FOR GRANTING CERTIORARI

SUMMARY OF ARGUMENT

Tampering with evidence that removes the most fundamental part of justice- the finding of fact- is an automatic removal of the due process right to a "fair play" proceedure. Note: Judge Joyner is accused of hiding evidence in a previous case (96-1910 3d Cir.) and Judge Garb is accused of altering transcripts just to harass federal plaintiff Snyder. (Moore v. Kusper and Younger v. Harris)

STATEMENT OF CASE

Daniel B. Snyder was a candidate for the office of Jury Comissioner in the May 20,1997 Republican primary. He petitioned Common Pleas Court of Bucks County for a recount and encountered extreme difficulties.

STATEMENT OF RELATED CASE

Tom Lingenfelter and Daniel Snyder v. Bucks County Board of Elections et al (3d Cir) 96-1910 96-6429. If certiorari is granted please review both for proper prospective value.

ARGUMENT

1. Hiding evidence is a serious obstruction of justice. An investigation of the Federal District Court Judge and his alleged hiding of evidence is warranted. Note: In Bucks County we have mechanical voting machines. The machines are simply re-voted on after the election and prior to the recount proceeding.

2. When a motion to dismiss has a fraudulent Certificate of Service the motion to dismiss is not

valid . If a Judgement by Default has been filed by the other side, then the Federal District Court is bound by proceedure to enter judgement by default.

3. The appendix contained within this petition contains contradictions. The district court did not give Judge Garb immunity or accept his 11th amendment arguement. Judicial immunity was never an issue in the Third Circuit nor was the 11th amendment mentioned. The district court identifies the method of fact finding (page 16 of this petition) in his opinion. This is ignored by the Third Circuit. Note: The Third Circuit identified issues and at the same time never acted on the fraudulent certificated of service or the ex-parte conference.

4. We see the use of "purported" in response to conspiracy/ ex-parte conference. We maintain that Judge Garb had a chance to deny that the conference took place and did not. Therefore, without denial by Judge Garb we maintain that the crucial ex-parte conference is a fact determined by

the District Court proceeding but never recognized by Judge J. Curtis Joyner or the Third Circuit !!

5. In the Younger v. Harris abstention there are no ongoing state proceedings. There can be no important state interest in preventing a federal plaintiff and the public from viewing as many as 10 election contests or from seeing the actual protective numbers from the original non-altered transcripts. The Common Pleas Court of Bucks County prevented judical discovery. We claim that without true discovery there is no adequate opportunity to raise federal claims in the state court system.

6. In Marks v. Stinson we see the Federal Court granting relief is possible if a parallel action(no suit is currently pending in the state) is sought at the federal level.

7. In Bush v. Lucas we see- page 2409- "This jurisdictional grant provides not only the authority to decide whether a cause of action is stated by a plaintiff's claim that he has been injured by a

violation of the Constitution, *Bell v. Hood*, 327 U.S. 678, 684, 66 S.Ct. 773, 776, 90 L. Ed. 939 (1946), but also the authority to choose among available judicial remedies in order to vindicate constitutional rights."

7. Pennsylvania law requires that all votes be counted. The premise is that, if fraud is alleged, fraud may not be evident in one race, but may be evident in other races, or by comparing vote counts among ballot positions or between different offices. When the races for five or six offices are contested all offices should be counted not just one race.

8. Upon review, anyone will see an extremely abnormal proceeding--far from the norm (O'Bar v. Pinion). The Common Pleas Court of Bucks County limited the recount to one race out of ten. It uncovered evidence that a voting machine had been voted on after the primary and before the recount proceeding, but failed to order an investigation as is required by the laws of the Commonwealth of Pennsylvania. Then the court altered the

transcripts, removing evidence of election fraud (tampering with the voting machine after the primary) from the public record. Finally, Judge Garb ordered that other plantiffs, execpt Mr. Snyder, be refunded their $50 deposits.

An extension of the federal court will be necessary to correct the vote count and the Common Pleas Court transcripts (Swann v. Mecklenburg)

RELIEF SOUGHT

1. An order to the Bucks County Prothonotary to return the $50 after finding substantial error.
2. An injunction over the Bucks County Board of Elections, and a subsequent order for a recount.

ADDITIONAL RELIEF SOUGHT SINCE APPEAL AT THIRD CIRCUIT

3. An investigation into the hiding of evidence by Judge J. Curtis Joyner.
4. A proper reprimand on A. Taylor Williams (Possible suspension of her license to practice) for giving the Federal Court a fraudulent

Certificate of Service.

AUTHORITIES RELIED UPON FOR DUE PROCESS

Article III Section 2- The judicial power shall extend to all cases, in law and equity, arising under this constution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between citizens of the same state claiming land under grants of different states, and between a state , or citizens thereof and foreign states, citizens or subjects. In all cases affecting ambassadors, their public ministers and counsuls, and those in which a state shall be party the supreme court shall have original jurisdiction. In all

other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and

fact, with such execptions, and under such regulations as the congress shall make.

U.S.Constitution Article 14- Pertinent part--> " No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law.

APPENDIX

In the United States District Court For The Eastern District Of Pennsylvania

DANIEL B. SNYDER : CIVIL ACTION

:

vs. :

: NO. 97-CV-5539

JUDGE ISAAC S. GARB :

ORDER

AND NOW, this 20th day of October, 1997, upon consideration of Plaintiff's Motions for Default Judgement and to Strike Defendant's Motion to Dismiss and Defendant's responses thereto, it is hereby ORDERED that the Motions are DENIED.

BY THE COURT:

J. CURTIS JOYNER, J.

1 As plaintiff himself personally served defendant's secretarey on September 2, 1997 in violation of Fed. R. Civ. P. 55(a), (b) (2).

MEMORANDUM AND ORDER

Joyner,J. December 1, 1997

This case has been brought before this Court upon motion by defendant Judge Isaac S. Garb to dismiss plaintiff's complaint against him as barred by the Rooker-Feldman doctrine and the Eleventh Amendment. For the reasons which follow, defendant's motion is granted and the complaint against him dismissed.

Factual Background

On September 2, 1997 , plaintiff, Daniel B. Snyder filed a 16- page complaint against Judge Isaac Garb of the Court of Common Pleas of Bucks County. Although Mr. Snyder's pleading is difficult to understand because of its rambling nature and because it fails to delineate any particular cause of action in separate counts or otherwise, it appears that plaintiff was a candidate for some type of public office in the May, 1997 primary election and lost. Plaintiff thereafter petitioned the Bucks County Court for an opening and re-count of the ballot boxes. Evidently, Judge Garb then held a hearing and ordered that a recount be conducted but allegedly denied the candidates or their representatives sight of the vote counters and limited the ability of the candidates or their representatives(including plaintiff) to inspect the machines and voting materials. Plaintiff contends that, in so ordering, Judge Garb prevented a proper recount of the voting machines and materials and

denied him a fair and impartial hearing on his petition in violation of the Pennsylvania Election Code, 25 P. S. 3261-3263. In response to plaintiff's complaint, Defendant moves for dismissal on the grounds that this Court lacks jurisdiction to adjudicate these claims by virtue of the bar of the Rooker-Feldmam doctrine and the Eleventh Amendment.

Standards Governing Motions to Dismiss for Lack of Subject Matter Jurisdiction

Fed. R. Civ. P. 12 (b) (1) permits the filing of a motion to dismiss for lack of jurisdiction over the subject matter of an action. Under that rule, a district court can grant a motion to dismiss for lack of subject matter jurisdiction based on the legal insufficiency of the claim, but dismissal is proper only when the claim "appears to be immaterial and made solely for the purpose of obtaining jurisdiction or is wholly insubstantail or frivolous." Kehr Packages,Inc. v. Fidelcor,Inc., 926 F. 2d 1406, 1408-1409 (3rd Cir. 1991), quoting Bell v.

Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 776, 90 L. Ed. 2d 939 (1946). When subject matter jurisdiction is challenged under Rule 12 (b) (1), the plaintiff must bear the burden of persuasion. Kehr, at 1409; Radeschi v. Commonwealth of Pennsylvania, 846 F. Supp> 419, 419 (E.D. Pa. 1993).

Unlike a motion to dismiss under Rule 12 (b) (6), when a party attacks the factual allegations of jurisdiction, the courts are not limited in their review to the allegations of the complaint. Any evidence may be reviewed and any factual disputes resolved regarding the allegations giving rise to jurisdiction as it is for the court to resolve all factual disputes involving the existence of jurisdiction. Sitkoff v. BMW of North America,Inc. 846 F. Supp. 380, 383 (E.D. Pa. 1944), *aff'd*, 92 F. 3d 1172 (3rd Cir. 1996), citing Moore's Federal Practice (Second Ed.) at 12.07(2.1). In contrast, if the attack to jurisdiction is facial (i.e., based on the allegations of

jurisdiction stated in the Complaint), the factual allegations of the complaint are presumed to be true and the complaint is reviewed to ensure that each element necessary for jurisdiction is present. Id. Only if it appears to a certainty that the pleader will not be able to assert a colorable claim of subject matter jurisdiction may the complaint be dismissed under those circumstances. Kronmuller v. West End Fire Co. No. 3, 123 F.R.D. 170, 172 (E.D. PA. 1988). See Also: Mortensen v. First Federal Savings and Loan Association, 549 F. 2d 884, 891 (3rd Cir. 1977).

Bar of Rooker-Feldman Doctrine

Defendant premises his motion upon the bar of the Rooker-Feldman doctrine and the Eleventh Amendment to the U. S. Constitution. As we find that plaintiff's claims are barred by application of Rooker-Feldman, we do not reach defendant's second argument.

The Rooker- Feldman doctrine is the result of two SupremeCourt cases, Rooker v. Fideleity Trust Co.,

263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U. S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). At its core, the doctrine is a recognition of the principle that the inferior federal courts generally do not have the power to exercise appellate review over stste court decisions. Kamilewicz v. Bank of Boston Corp., 92 F. 3d 506, 509 (7th Cir. 1996). The Rooker-Feldman doctrine prec;udes federal review of lower stste court decisions, just as it precludes review of the decisions of a state's highest court. Port Authority PBA v. Port Authority of N.Y. & N.J., 973 F. 2d 169, 177 (3rd Cir. 1992).

In order to determine the applicability of the Roker-Feldman doctrine, the fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgement itself or is distinct from that judgement. Stated otherwise, is the plaintiff seeking to set aside a stste court judgement or is he

presenting an independent claim? Kamilewicz, at 510; Garry v. Geils, 82 F. 3d 1362, 1365-1366 (7th Cir. 1996). If the injury alleged resulted from the state court judgement itself, Rooker-Feldman directs that the lower federal courts lack jurisdiction even if the alleged injury resulted from a state court action which was unconstitutional or erroneuos and even if the plaintiff failed to raise their federal constitutional claims in state court. District of Columbia Court of Appeals v. Feldman, supra, 460 U.S. at 486, 103 S. Ct. at 1317; Lal v. Nix, 935 F. Supp. 578, 582 (E.D. Pa. 1996).

Applying these principles to this case and after carefully scrutinizing plaintiff's complaint, it is clear that plaintiff's claims against defendant arise out of what plaintiff believes to be an erroneous and improper order directing the manner in which the recounts of the ballot boxes from the May, 1997 Primary was to be conducted. It is thus obvious that the injury of which plaintiff complains resulted from an order of a state court and the relief which

he seeks is the setting aside of that order and the entry of one more to his liking. It is precisely this type of case which the Rooker-Feldman doctrine prohibits the federal courts from hearing. As we do not have jurisdiction to hear this action, it must be dismissed with prejudice.

An appropriate order follows.

ORDER

AND NOW, this 1st dar of December, 1997, upon consideration of Defendant's Motion to Dismiss Plaintiff's Complaint, it is hereby ORDERED that the Motion is GRANTED and Plaintiff's Complaint is DISMISSED with prejudice for the reasons set forth in the preceding Memorandum.

BY THE COURT:

J. CURTIS JOYNER, J.

NOT-FOR-PUBLICATION

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 98-1033

DANIEL B. SNYDER,

Appellant

v.

ISAAC S. GARB,JUDGE

On Appeal From the United States District Court

For the Eastern District of Pennsylvania

(D.C. Civ. No. 97-cv-05539

District Judge: Honorable J. Curtis Joyner

Submitted Under Third Circuit LAR 34.1(a)

June 29, 1998

Before: SLOVITER,MCKEE and SEITZ,
Circuit Judges.

OPINION

PER CURIAM.

Daniel B. Snyder appeals pro se from the district court's order denying his motion for reconsideration of the court's order granting the defandant's motion to dismiss. We will affirm the district court's order.

In his complaint, Snyder contends that after he lost in the May 1997 Pennsylvania Primary election, he sought a recount in state court under the Pennsylvania Election Code. He alleges that the defandant, Isaac S. garb of the Bucks County, Pennsylvania, Court of Common Pleas, failed to provide an impartial hearing, conducted an ex parte conference with the county solicitor, limited candidates' ability to inspect the voting machines and voting materials, failed to order the district attorney to investigate the election, and committed

other errors in violation of the letter and spirit of the Pennsylvania Election Code and Constitution. Snyder seeks injunctive relief, including the recounting of votes.

Judge Garb filed a motion to dismiss the complaint for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine and the Eleventh Amendment to the United States Constitution. This court has described this doctrine, which derives from Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), as providing that

> federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are " inextricably intertwined with the state court's [decision] in a judicial proceeding." Blake v. Papadakos, 953 F.2d 68, 71 (3d Cir. 1992).... We have interpreted the doctrine to encompass final decisions of lower state courts. Port Auth. Police Benev. Ass'n v. Port Auth, 973 F.2d

169, 178 (3d Cir. 1992).

Focus v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1998).

The district court found Snyder's compliant falls squarely within the Rooker-Feldman doctrine because Snyder seeks to set aside a state court judgement and replace it with one in his favor, rather than presenting a separate claim. Accordingly the court granted the motion for reconsideration, which the court denied for the same reasons.

The premise of the Rooker-Feldman doctrine when the federal challenge is to the decision of a state trial court is that any errors or improper procedures should be raised in the state appellate courts. This encompassses the alleged impropieties that Snyder alleges, i.e., the " fraudulent Certificate of Service" and a purported ex-parte conference between Judge Garb and the attorney for the Board of Elections. Because we agree with the district court that its condideration of Snyder's compliant is

barred by the Rooker-Feldman doctrine, we will not consider other patent defects in this suit against a state judge, who is insulated from such a suit by immuntiy. We will, therefore, affirm the disctrict court's order denying Snyder's motion for reconsideration of its prior order dismissing the complaint.

TO THE CLERK:

Kindly file the foregoing opinion.

NOT-FOR-PUBLICATION

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 98-1033

DANIEL B. SNYDER,

Appellant

v.

ISAAC S. GARB,JUDGE

On Appeal From the United States District Court

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District Judge: Honorable J. Curtis Joyner

Submitted Under Third Circuit LAR 34.1(a)

June 29, 1998

Before: SLOVITER,MCKEE and SEITZ,

Circuit Judges.

JUDGEMENT

This case came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgement of the district court entered December 30, 1997 be and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.